

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item #13 (Rev. 1)

ID #12266

RESOLUTION E-4606

August 15, 2013

REDACTED

R E S O L U T I O N

Resolution E-4606. San Diego Gas & Electric Company (SDG&E) requests approval of three sales agreements, with Exelon Generation Company, Pilot Power Group, Inc., and Noble Americas Energy Solutions LLC, to resell renewable generation and the associated renewable energy credits.

PROPOSED OUTCOME: This Resolution approves SDG&E's sales agreement with Exelon Generation Company, SDG&E's sales agreement with Pilot Power Group, Inc., and SDG&E's sales agreement with Noble Americas Energy Solutions LLC without modification.

SAFETY CONSIDERATIONS: The agreements approved by this resolution will not alter existing agreements or any facility operations. Because these agreements do not require a change in facility operations there are no incremental safety implications associated with approval of these agreements beyond the status quo.

ESTIMATED COST: Costs of the agreements are confidential at this time.

By Advice Letter 2483-E filed on May 29, 2013.

SUMMARY

San Diego Gas & Electric Company's proposed sales agreements with Exelon Generation Company, Pilot Power Group, Inc., and Noble Americas Energy Solutions LLC comply with the Renewables Portfolio Standard (RPS) program guidelines and are approved.

San Diego Gas & Electric Company (SDG&E) filed Advice Letter (AL) 2483-E on May 29, 2013 requesting Commission review and approval of three agreements – a sales agreement executed with Exelon Generation Company (Exelon)¹, a sales agreement executed with Pilot Power Group, Inc. (Pilot)², and a sales agreement executed with Noble Americas Energy Solutions LLC (Noble)³. All three agreements are short-term, bilateral agreements for the resale of renewable generation and associated renewable energy credits (RECs) (“bundled” products) from various operating, RPS-certified facilities that are under contract to SDG&E.

This resolution approves the three sales agreements without modification. SDG&E’s execution of these agreements is consistent with SDG&E’s 2012 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 12-11-016. Sales from SDG&E to Exelon, Pilot, and Noble pursuant to the agreements are reasonably priced. Payments received by SDG&E under the sales contracts shall be credited to SDG&E’s ratepayers via SDG&E’s Energy Resource Recovery Account (ERRA).

The following table summarizes the agreements:

Table 1: Summary of the Exelon Agreement, Pilot Agreement, and Noble Sales Agreement

Buyer	Technology Type	Term (Years)	Minimum Energy (GWh)	Contract Start Date	Location
Exelon Generation	Various, existing RPS-eligible	2	300 in 2014 300 in 2015	1/1/2014	California

¹ Exelon’s subsidiary, Constellation NewEnergy, Inc., is one of the largest Electric Service Providers (ESPs) in California with service to direct access retail and commercial power consumers.

² Pilot Power Group, Inc. is an ESP in California offering custom energy solutions, portfolio management, and energy procurement strategies for commercial and industrial customers.

³ Noble Americas Energy Solutions is an ESP in California. They are a wholly owned subsidiary of the Noble group.

Company	technologies				
Pilot Power Group, Inc	Various, existing RPS-eligible technologies	3	105 in 2014 115 in 2015 160 in 2016	1/1/2014	California
Noble Americas Energy Solutions	Various, existing RPS-eligible technologies	2	200 in 2014 200 in 2015	1/1/2014	California

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).⁴ The RPS program is codified in Public Utilities Code Sections 399.11-399.31.⁵ Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.⁶

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

⁴ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

⁵ All further references to sections refer to Public Utilities Code unless otherwise specified.

⁶ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020).

NOTICE

Notice of AL 2483-E was made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

On June 18, 2013 the Independent Energy Producers Association (IEP) timely protested AL 2483-E.

SDG&E filed a reply on June 25, 2013.

DISCUSSION

San Diego Gas & Electric Company (SDG&E) requests approval of a sales agreement with Exelon Generation Company, a sales agreement with Pilot Power Group, Inc., and a sales agreement with Noble Americas Energy Solutions LLC.

On May 29, 2013, SDG&E filed AL 2483-E requesting Commission approval of three bilaterally negotiated short-term sales agreements. In AL 2483-E, SDG&E reasons that together the three executed agreements optimize the value of its RPS portfolio by lowering ratepayer costs.

Pursuant to the sales agreements, SDG&E will sell RPS-eligible energy and associated RECs from California, RPS-eligible facilities that are under CPUC-approved contracts to provide RPS-eligible generation and associated RECs to SDG&E. The net result of the three contracts is a decrease of approximately 1,380 gigawatt-hours (GWh) to SDG&E's RPS portfolio.

The facilities from which SDG&E may re-sell RPS-eligible energy and associated RECs to Exelon, Pilot, and Noble are listed in Table 2 (below). All facilities are, or will be, located in California and interconnected into the California Independent System Operator balancing authority.

Table 2: List of Facilities under contract to SDG&E that may provide RPS-eligible energy and associated RECs to Exelon, Pilot, and Noble

Name of Facility	Resource	Location	CEC RPS ID	Host Balancing Authority
AES Delano Inc	Biomass	Delano, CA	60431A	CAISO
AES Mt Signal 1 Solar	Solar PV	Imperial Valley, CA		CAISO
Arlington	Solar PV	Hassayampa, AZ		CAISO
Badger Filtration Plant	Conduit Hydro	Rancho Sante Fe, CA	60438E	CAISO
Bear Valley Hydro	Conduit Hydro	Escondido, CA	60439E	CAISO
Blue Lake Power, LLC	Biomass	Blue Lake, CA	60690A	CAISO
Borrego PV Solar I	Solar PV	Borrego Springs, CA	61211C	CAISO
Calpine Geysers	Geothermal	Sonoma & Lake County, CA	60002A	CAISO
			60003A	CAISO
			60004A	CAISO
			60005A	CAISO
			60006A	CAISO
			60007A	CAISO
			60008A	CAISO
			60009A	CAISO
			60012D	CAISO
			60013D	CAISO
			60014C	CAISO
			60015C	CAISO
			60016C	CAISO
Gestamp Calipatria	Solar PV	Calipatria, CA		CAISO
GRS – Sycamore	Biogas	Santee, CA	60486A	CAISO
Manzana Wind	Wind	Tehachapi, CA	61671C	CAISO
Mesa Wind Farm	Wind	Riverside County, CA	60370A	CAISO
MM Prima Deshecha Energy, LLC	Biogas	San Juan Capistrano, CA	60552A	CAISO
MM San Diego – Miramar	Biogas	San Diego, CA	60481A	CAISO
MMR Campo Verde	Solar PV	Imperial Valley		CAISO
Mushroom Power - CRE (FIT)	Biomass	San Diego, CA		CAISO

Name of Facility	Resource	Location	CEC RPS ID	Host Balancing Authority
Oasis Power Partners	Wind	Mojave, CA	60489A	CAISO
Ocotillo Wind Energy Facility	Wind	Imperial Valley, CA	61400C	CAISO
Olivehain Municipal	Conduit Hydro	Olivenhain, CA	60441E	CAISO
Otay Landfill I	Biogas	Chula Vista, CA	60433E	CAISO
Otay Landfill II	Biogas	Chula Vista, CA	60434E	CAISO
Otay Landfill V - CRE (FIT)	Landfill gas	San Diego, CA		CAISO
Otay Landfill VI - CRE (FIT)	Landfill gas	San Diego, CA		CAISO
Pacific Wind, LLC	Wind	Tehachapi, CA	61555C	CAISO
Phoenix West	Wind	Riverside County, CA	60445A	CAISO
RAM (To be added)	Solar PV	Various in SD County		CAISO
Regenerate Seville	Solar PV	El Centro, CA		CAISO
Rugraw Lassen Lodge Hydro	Small Hydro	Lassen, CA		CAISO
San Francisco Peak Hydro Plan	Conduit Hydro	Oceanside, CA	60442E	CAISO
San Marcos Landfill	Biogas	San Marcos, CA	60435A	CAISO
SDG&E SEP (UOG)	Solar PV	Various in SD County		CAISO
SDG&E Sustainable	Solar PV	Various in SD County	Various	CAISO
Soitec Desert Green	Solar PV	Borrego Springs, CA		CAISO
Soitec Eastland	Solar PV	Boulevard, CA		CAISO
Soitec Rugged	Solar PV	Boulevard, CA		CAISO
Soitec TDS	Solar PV	Boulevard, CA		CAISO
Soitec Westland	Solar PV	Boulevard, CA		CAISO
Sol Orchard	Solar PV	San Diego County, CA (distributed)		CAISO
Solargen2	Solar PV	Imperial Valley, CA		CAISO
SunEdison Cascade	Solar PV	SunFair, CA		CAISO
Tenaska South	Solar PV	Calexico, CA		CAISO
Tenaska West	Solar PV	Imperial Valley, CA		CAISO
Victor Mesa Linda B	Solar PV	Victorville, CA		CAISO
Western Antelope Dry	Solar PV	Lancaster, CA		CAISO

Name of Facility	Resource	Location	CEC RPS ID	Host Balancing Authority
Ranch				
Zodiac Power Solar A - CRE (FIT)	Solar PV	Potrero, CA		CAISO
Zodiac Solar E - CRE (FIT)	Solar PV	Potrero, CA		CAISO

SDG&E requests the Commission to issue a resolution that finds⁷:

1. The proposed sales agreements with Exelon, Pilot, and Noble are consistent with SDG&E's CPUC-approved RPS Procurement Plan and the sale of the bundled renewable electricity and green attributes under the proposed agreements with Exelon, Pilot, and Noble are reasonable and in the public interest.
2. SDG&E's entry into the proposed agreements with Exelon, Pilot, and Noble and the terms of such agreements are reasonable; therefore, the proposed agreements are approved in their entirety and all costs of the proposed agreements are fully recoverable in rates over the life of the proposed agreements, subject to Commission review of SDG&E's administration of the proposed agreements.
3. The total expected revenues of the proposed agreement are reasonable based on the estimated costs to SDG&E ratepayers and the proposed agreement's price relative to market data.
4. Payments received by SDG&E pursuant to the proposed agreements shall be credited to SDG&E ratepayers through SDG&E's Energy Resource Recovery Account over the life of the proposed agreements, subject to Commission review of SDG&E's administration of the proposed agreements.
5. Any other and further relief as the Commission finds just and reasonable.

Energy Division Review Of The Proposed Agreements

Energy Division evaluated the three agreements using the following criteria:

⁷ AL 2483-E, p. 14

- Consistency with bilateral contracting guidelines
- Consistency with SDG&E's 2012 RPS Procurement Plan (Plan)
- Consistency with RPS standard terms and conditions (STC)
- Independent Evaluator review
- Procurement Review Group (PRG) participation
- Price and Cost reasonableness
- Contract viability
- Public Safety

Consistency With Bilateral Contracting Guidelines

SDG&E adhered to the bilateral contracting rules because: the Exelon, Pilot, and Noble agreements are each longer than one month in duration, the agreements were filed by advice letter, were reviewed by SDG&E's Procurement Review Group, negotiations were overseen by an independent evaluator, and the Exelon, Pilot, and Noble agreements are reasonably priced, as discussed in more detail below.

The Exelon, Pilot, and Noble Agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with SDG&E's 2012 RPS Procurement Plan

Pursuant to statute, SDG&E's RPS Procurement Plan (Plan) includes an assessment of supply and demand to determine the optimal mix of renewable generation resources; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁸ California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁹ The

⁸ Pub. Util. Code § 399.13(a)(5).

⁹ Pub. Util. Code § 399.13(d).

Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.¹⁰

In SDG&E's 2012 RPS Plan, SDG&E expressed a commitment to meet its RPS requirements in a cost-effective manner. SDG&E's 2012 RPS Plan called for SDG&E to issue competitive solicitations for the purchase and sale of RPS-eligible energy and/or RECs and that bilateral offers would be considered if they were competitive when compared against recent solicitation offers and provide benefits to SDG&E customers. In addition SDG&E stated that it would consider short-term contracts when it is short in the most immediate Compliance Period, but long in the subsequent Compliance Period. SDG&E also noted that it would consider procurement strategies that maximize the product category limitations in order to optimize ratepayer value across compliance periods. Lastly, SDG&E's Plan discussed utility plans to pursue renewable energy generation development partnerships and utility-owned resources.

The Exelon, Pilot, and Noble agreements are for the sale of renewable generation and associated RECs that fit SDG&E's renewable resource needs as identified in its 2012 RPS Plan. The Exelon, Pilot, and Noble agreements are consistent with SDG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.

SDG&E's RPS Procurement Portfolio Need

Energy Division forecasts SDG&E to have excess renewable generation in Compliance Period 2014-2016.¹¹ This Energy Division forecast takes into account a certain amount of contract failure within SDG&E's RPS procurement portfolio. Figure 1 below depicts Energy Division's forecast of SDG&E's RPS net

¹⁰ SDG&E's 2012 RPS Procurement Plan was approved by D.12-11-016 on November 8, 2012.

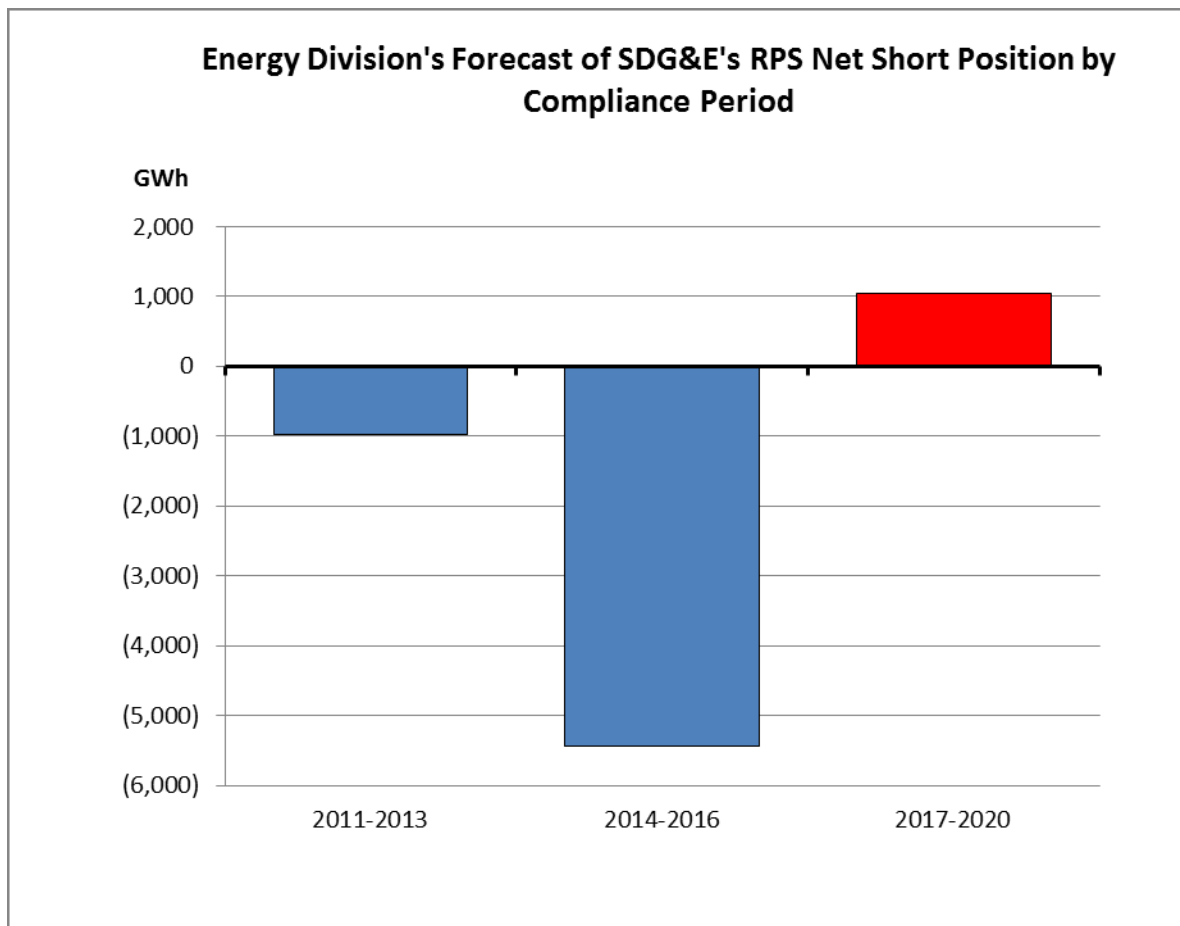
¹¹ In addition to increasing California's RPS requirement to 33 percent from 20 percent, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session) establishes three different compliance periods. In D.11-12-020 the Commission defined the compliance periods (2011-2013; 2014-2016; and 2017-2020) and the methodology for calculating the RPS procurement quantity requirements for each compliance period.

long/short position for each compliance period under a risk-adjusted scenario.¹² This graphical illustration shows that prior to the proposed contracts SDG&E is forecasted to have excess RPS procurement in the second compliance period, but may have insufficient RPS resources under contract during the Compliance Period 2017-2020.¹³ All or a portion of the forecasted excess procurement from the second compliance period could potentially be applied towards future RPS requirements, and thus could reduce SDG&E's RPS needs in compliance period three or later. The sales agreements with Exelon, Pilot, and Noble would decrease the amount of forecasted excess generation, but not to an amount below SDG&E's forecasted RPS compliance need for the Compliance Period 2014-2016.

¹² Energy Division staff's forecast of SDG&E's RPS Procurement Portfolio is based on SDG&E's 2011 Preliminary Annual 33% RPS Compliance Report and the Commission's RPS Project Status Table. The Energy Division's forecast does not include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

¹³ Energy Division staff made several assumptions in developing its forecast: 1) operational projects will generate 100% of contracted generation; 2) projects under development will have a 75 percent rate of meeting the terms and conditions of the PPAs; 3) no carrying over of forecasted excess generation from one compliance period to another because SDG&E may or may not choose to apply all excess procurement towards subsequent requirements (but, if all forecasted eligible excess procurement is applied to future compliance periods, SDG&E is forecasted to have a net long position, instead of a net short position, for Compliance Period 2017-2020); and 4) prior deficits will need to be satisfied.

Figure 1: Energy Division forecasts that SDG&E may have excess RPS procurement in the Compliance Period 2014-2016



Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered “non-modifiable.” The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. The Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

Both the Exelon and Noble sales agreements are based on the Western Systems Power Pool (WSPP) agreement. The Pilot sales agreement is based on the Edison Electric Institute (EEI) standard form agreement. The Exelon, Pilot, and Noble agreements include the Commission adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Portfolio Content Categories and Resale

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program. D.11-12-052 also adopted a set of conditions for allowing the resale of a part of or all of a contract for RPS procurement.

In AL 2483-E, SDG&E claims that it is procuring Portfolio Content Category 1 product and reselling the product to Exelon, Pilot, and Noble as Portfolio Content Category 1 product pursuant to the Exelon, Pilot and Noble sales agreements. To support its claim, SDG&E states that the product being sold will be from RPS-certified facilities that have their first point of interconnection with the California Independent System Operator balancing authority.

In this resolution, however, the Commission makes no determination regarding the proposed agreements' portfolio content category classification or if resale conditions are met because RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification which requires consideration of several factors based on various showings in a compliance filing.¹⁴ Thus, making a portfolio content classification determination in this resolution regarding the procurement considered herein is not appropriate.

Independent Evaluator Review

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's bilateral negotiations with Exelon, Pilot, and Noble and to evaluate the overall merits for CPUC approval of the agreements. AL 2483-E included public and confidential independent evaluator's report for the three sales agreements.

In the IE report, the IE states that he believes that the Exelon, Pilot, and Noble agreements merit Commission approval. Specifically, the IE notes that the agreements are "economically beneficial to SDG&E's ratepayers" and "almost surely pose no risk to SDG&E's achievement" of its second Compliance Period RPS requirement.

¹⁴ D.11-12-052, pp. 8, 12.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's negotiations with Exelon, Pilot, and Noble.

Procurement Review Group Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.¹⁵ SDG&E asserts that all three of the Exelon, Pilot, and Noble agreements were discussed at PRG meetings in January, February, and March of 2013. Thus, pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the Exelon, Pilot, and Noble agreements.

Cost Reasonableness

In AL 2483-E, SDG&E stated that the sales agreements are intended to "optimize" SDG&E's RPS portfolio. SDG&E analyzed the cash flows related to the costs and revenues of the three sales agreements. Additionally, SDG&E compared the prices of the sales agreements to its previously executed sales agreements and recent short-term RPS purchase agreements.

For the review of the sales agreements' price reasonableness, the Commission compared the sales agreements' prices to the sales agreements' prices of SDG&E's recently executed sales agreements and market data. Based on this analysis and the confidential analysis provided by SDG&E in AL 2483-E, we determine that the sales agreements' prices are reasonable. We note, however, that the Commission has not established rules for price reasonableness review of contracts for RPS sales by IOUs and that the analysis of the sales agreements' price reasonableness here is not precedent setting. Confidential Appendix A includes a detailed discussion of the contractual pricing terms and the analysis of the reasonableness of the contract price.

¹⁵ SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

The total expected revenues of the sales agreements are reasonable based on the estimated costs to SDG&E ratepayers and the sales agreements' prices relative to a recently executed SDG&E contract and market data.

Payments received by SDG&E under the sales agreements shall be credited to SDG&E's ratepayers through SDG&E's Energy Resource Recovery Account (ERRA) over the life of the sales agreements, subject to Commission review of SDG&E's administration of the sales agreements.

SDG&E is required to demonstrate in its ERRA Review Proceedings that its least-cost dispatch processes, operations and related spot market transactions comply with all applicable Standards of Conduct (SOC) (including SOC No. 4 concerning cost dispatch obligations). SDG&E shall record the transactions authorized in this Resolution in its ERRA Balancing Accounts, and these transaction shall be subject to the Commission's ERRA Review Proceeding.

Contract Viability

The generation to be delivered pursuant to the Exelon, Pilot, and Noble agreements is from a large portfolio of facilities, many of which have already been certified by the CEC as RPS-eligible and generating RPS-eligible energy; thus, it is reasonable that SDG&E will be able to meet the terms and conditions of the sales agreements.

Public Safety

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public. This resolution approves two contracts. The Exelon, Pilot, and Noble agreements are for the sale of renewable generation and associated RECs from RPS-eligible facilities. None of the sales agreement alters existing power purchase agreements or any facility operations. As these agreements do not require a change in facility operations, there are no incremental safety implications associated with approval of these contracts beyond the status quo. Based on the information before us, these agreements do not appear to result in any adverse safety impacts on the facilities or operations of SDG&E.

IEP's protest recommending verification of the proposed sales for consistency with Public Utilities Code Sections 399.21(a)(4) and 399.21(a)(5), as implemented in D.10-03-021, as modified, is denied

In IEP's protest it neither recommends rejection or approval of Advice Letter 2483-E. Instead, IEP recommends that Energy Division verify that the potential RECs being sold pursuant to the three sales agreements are consistent with Pub. Util. Code Sections 399.21(a)(4) and 399.21(a)(5).¹⁶

In reply, SDG&E asserts that while AL 2483-E includes all of SDG&E's contracted RPS-eligible resources located in California, it does not intend to use resources that have contracts executed prior to January 1, 2005. Additionally, SDG&E filed substitute sheets to AL 2483-E to remove any resources that it executed contracts with prior to January 1, 2005.

We find IEP's concern not appropriate in this instance and therefore deny IEP's protest. IEP's stated concern is that the proposed transactions may be reselling unbundled RECs that are restricted pursuant to Pub. Util. Code Sections 399.21(a)(4) and 399.21(a)(5). While SDG&E attempted to address IEP's concerns,

¹⁶ Section 399.21(a)(4) and (a)(5) provides:

(4) Renewable energy credits shall not be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Procurement under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.25 and included in the quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(5) Renewable energy credits shall not be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Procurement under the electricity purchase contracts shall be tracked through the accounting system implemented by the Energy Commission pursuant to subdivision (b) of Section 399.25 and count toward the renewables portfolio standard procurement requirements of the purchasing retail seller.

by modifying AL 2483-E, the modification does not actually address IEP's concern since SDG&E modified only Advice Letter 2483-E and not the proposed sales agreements. However, the proposed sales agreements in AL 2483-E propose that SDG&E resells RPS-eligible energy and its associated RECs, not unbundled RECs. Thus, the Commission denies IEP's protest because the Pub. Util. Code sections and decision referenced by IEP refers to unbundled RECs, which is not the proposed product that is the subject of the sales agreements considered herein.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Util. Code § 399.25, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁷

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law."¹⁸

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that "any

¹⁷ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

¹⁸ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin or one year after expiration, whichever comes first, except contracts between IOUs and their affiliates, which are public. In this case, the contracts will be public three years after deliveries begin.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS ON THIS RESOLUTION

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable

30-day period for public review and comment is being waived.

FINDINGS AND CONCLUSIONS

1. The Exelon, Pilot, and Noble agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

2. The Exelon, Pilot, and Noble agreements are consistent with SDG&E's 2012 RPS Procurement Plan, approved by D.12-11-016.
3. The Exelon, Pilot, and Noble agreements include the Commission-adopted "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
4. The Commission makes no determination regarding the proposed Exelon, Pilot, or Noble agreements' portfolio content category classifications because RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification.
5. Consistent with D.06-05-039 an independent evaluator oversaw SDG&E's negotiations with Exelon, Pilot, and Noble.
6. SDG&E's Procurement Review Group participated in the review of the Exelon, Pilot, and Noble sales agreements consistent with D.02-08-071.
7. The analysis of the sales agreements' price reasonableness is not precedent setting.
8. The total expected revenues of the Exelon, Pilot, and Noble agreements are reasonable based on the estimated costs to SDG&E ratepayers and the sales contract's price relative to SDG&E's recently executed sales contract and market data.
9. Payments received by SDG&E pursuant to the Exelon, Pilot and Noble sales agreements shall be credited to SDG&E ratepayers through SDG&E's Energy Resource Recovery Account (ERRA) over the life of the sales agreements, subject to Commission review of SDG&E's administration of the Exelon, Pilot, and Noble sales agreements.
10. SDG&E is required to demonstrate in its ERRA Review Proceedings that its least-cost dispatch processes, operations and related spot market transactions comply with all applicable Standards of Conduct (SOC) (including SOC No. 4 concerning cost dispatch operations). SDG&E shall record the transactions authorized in this Resolution in its ERRA Balancing Accounts, and these transactions shall be subject to the Commission's ERRA Review Proceeding.
11. It is reasonable that SDG&E will be able to meet the terms and conditions of the Exelon, Pilot, and Noble agreement.
12. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

13. The Independent Energy Producers; protest is denied because the Public Utilities Code Sections 399.21(a)(4) and 399.21 (a)(5) and Decision 10-03-021, as modified, referenced by Independent Energy Producers refers to unbundled RECs, which is not the proposed RPS product that is the subject of the sales agreements considered herein.
14. AL 2483-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2483-E, requesting Commission review and approval of a sales agreement with Exelon Generation Company, a sales agreement with Pilot Power Group, Inc., and a sales agreement with Noble Americas Energy Solutions LLC, is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 15, 2013; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation Summary of the Exelon, Pilot, and Noble Agreements

[Redacted]